

	<b>GEORGIA DIVISION OF FAMILY AND CHILDREN SERVICES CHILD WELFARE POLICY MANUAL</b>			
	<b>Chapter:</b>	(10) Foster Care	<b>Effective Date:</b>	September 2020
	<b>Policy Title:</b>	Service Needs of an Immigrant Child		
	<b>Policy Number:</b>	10.17	<b>Previous Policy #:</b>	N/A

### CODES/REFERENCES

Title IV-E of the Social Security Act Section 471(a)(27)  
 Immigration and Nationality Act  
 Georgia Security and Immigration Compliance Act of 2006  
 Vienna Convention on Consular Relations of 1963

### REQUIREMENTS

The Division of Family and Children Services (DFCS) shall:

1. *Have in effect procedures for verifying the citizenship or immigration status of any child in foster care under the responsibility of the State under Title IV-E or Part B, and without regard to whether foster care maintenance payments are made under section 472 on behalf of the child.*
2. Notify the closest applicable consulate immediately, whenever it has reason to believe a child subject to removal from the home is a foreign national (someone other than a U.S. citizen, U.S. permanent or temporary legal resident alien, or person in U.S. custody).
3. Comply with Consular Notification and Access regardless of the foreign national minor's visa, refugee, or immigration status in the United States. **Under no circumstances** should the fact that a foreign national has applied for asylum or refugee status be revealed to their national government.
4. Provide foster care services to children without regard to their immigration status.
5. Follow the provisions of the Immigration and Nationality Act (INA) when unable to determine a child's lawful US residency status. Information regarding the INA is available at <http://www.uscis.gov/laws/immigration-and-nationality-act>.
6. Determine **within 60 days** of an undocumented immigrant child entering foster care whether reunification with the child's parents within the U.S. or in the child's country of citizenship is in the child's best interest.
7. Ensure the Case Plan and Written Transitional Living Plan (WTLP) for an undocumented immigrant child in foster care addresses DFCS efforts to:
  - a. Repatriate the youth (return the youth to their country of citizenship);
  - b. Seek immigration status relief (i.e. Special Immigrant Juvenile (SIJ) status) via the United States Citizenship and Immigration Services (USCIS);
  - c. Secure placement with identified resources post foster care discharge.
8. Not seek SIJ status for immigrant children who have a verified immigrant status (i.e. refugee, asylee, permanent resident, etc.).

## PROCEDURES

**When encountering a possible undocumented immigrant child**, the Social Services Case Manager (SSCM) will:

1. Interview the child, his/her parents or relatives to determine if any of them are U.S. citizens, foreign nationals, or have dual citizenship.
  - a. Request an interpreter to assist when English is not the family's primary spoken language via the Georgia Department of Human Services' Limited English Proficient/Sensory Impaired (LEP/SI) program.
    - i. The LEP/SI request is accessed through the DFCS Client Language Service Coordinator.
    - ii. Ensure the interpreter translates for all family members so relatives do not translate for each other.
  - b. Inquire about the birthplace of the child, his/her parents and relatives.
2. Verify the child's lawful residency status using documentary evidence:
  - a. U.S. Birth Certificate;
  - b. Naturalization Certificate (N-550 or N-570);
  - c. Certificate of Citizenship (N-560 or N-561);
  - d. U.S. Passport;
  - e. Hospital Certificate, or Baptismal Certificate;
  - f. Permanent Resident Card ("Green Card" or I-551);
  - g. Other form of immigration documentation.
3. Request a non-citizen identification number when nationality documentation indicates the child is not a U.S. citizen or the child does not have documentation supporting legal residency. To apply for or obtain further details on social security numbers for non-U.S. citizens, visit [www.ssa.gov](http://www.ssa.gov).
4. Immediately notify the appropriate consulate of the child being in DFCS custody.
  - a. Inform the parent and child (14 years of age and older) of the need for DFCS to notify the applicable consulate when the court considers or awards DFCS temporary custody.
  - b. Locate contact information in the U.S. Department of State's directory of Foreign Consular Offices in the United States.
  - c. Call the consulate's office to verify the name of the current Consular, their email address, and fax number, then fax or email the Consular Notification Form Letter.
  - d. Allow the consular authorities to express any interest their government might have in the issue being addressed by DFCS while continuing to provide the appropriate foster care services.
  - e. Allow the consular officer the opportunity to assist with services for the foreign national minor.
    - i. The actual services provided by the consular office will vary in light of numerous factors, including the foreign country's level of representation in the United States and available resources.
    - ii. Request the consular authorities' assistance with repatriation, diligent search for relatives in the home country, obtaining a birth certificate, passport or photo ID as needed.
5. Ensure the child's nationality is entered on the Medicaid and IV-E Application along with documentary evidence. If unable to secure the child's nationality documentation, the

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SSCM must document efforts made to obtain it.

6. Determine **within 60 days** of an undocumented immigrant child entering foster care whether reunification with the child's parents or repatriation to the child's country of citizenship is in the child's best interest.
  - a. Staff the case with the Social Services Supervisor, County Director, Regional Field Program Specialist, and SAAG prior to petitioning the court for a non-reunification court order to determine if seeking SIJ status or another immigration status for a child is a viable option.
  - b. If it is determined that repatriation is not in the child's best interest, obtain approval from the Region Director to seek immigration relief for the child (i.e. filing a petition for SIJ Status and Lawful Permanent Resident Status).
  - c. Obtain approval from the Region Director to secure the services of an immigration attorney to seek SIJ Status or another immigration status for undocumented immigrant children especially those who:
    - i. Have an expired visa;
    - ii. Are victims of human trafficking;
    - iii. Are within six months of reaching 18 years of age;
    - iv. Are involved in deportation proceedings or were previously deported;
    - v. Are involved in juvenile delinquency proceedings or have juvenile delinquency records;
    - vi. Have criminal records;
    - vii. May have a communicable disease.
- NOTE:** *An immigration attorney cannot be paid with government funds; they may assist on a pro bono basis or be paid with non-government funds. It may be necessary to seek the assistance of a community based legal services to assist with the SIJ status application and interview process. **Keep in mind that any legal services for immigration purposes cannot be paid using government funds.***
7. When reunification or repatriation is determined not to be in the child's best interest, incorporate immigration status relief issues into the child's case plan goals and assess placement with relatives.
8. Obtain approval from the office of the Placement and Permanency Director when considering the following with regard to an undocumented immigrant child in foster care:
  - a. Placing the child with an undocumented immigrant relative placement resource;
  - b. Petitioning for termination of parental rights (TPR);
  - c. Requesting a Kinship Assessment on a resource outside of the United States.
9. Notify the applicable consulate immediately in the event of the death of a minor foreign national in DFCS custody at the time of death.

**When completing the Comprehensive Child and Family Assessment (CCFA), the SSCM will:**

1. Ensure the CCFA provider is able to communicate effectively with the child and family.
2. Ensure the CCFA is a culturally competent assessment that at a minimum addresses the following (in addition to CCFA minimum standards):
  - a. The nationality and immigration status of the child, his/her parents, and relatives;
  - b. The human rights conditions of the child's country of origin;
  - c. Response/input from the child's Consulate Office;

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- d. Recommendation regarding legal immigration status for the child.

**When seeking SIJ status for an undocumented immigrant child, the SSCM will:**

1. Determine if SIJ or another immigration status is the most appropriate for the child based on the circumstances. (See Legal Services in Practice Guidance)
2. Petition the Juvenile court (before the child reaches 18 years of age) to certify SIJ eligibility via a qualifying court order that includes the following four findings required to certify SIJ status eligibility:
  - a. The child is unmarried and dependent on the court or legally committed to or placed under the custody of either a state agency/department or an individual or entity appointed by a state or Juvenile Court. (This can include adoption or guardianship).
  - b. Reunification with one or both of the child's parents is not viable due to abuse, neglect, abandonment, or similar basis under state law.
  - c. It would not be in the child's best interest to be returned to his/her country of origin.
  - d. The child is under 21 years old.

**NOTE:** The SAAG may assist in the preparation of the court order, but is not authorized to provide immigration status relief services.

3. Complete and sign, on behalf of a child under 14 years of age, *Form I-360 Petition for Amerasian, Widow(er), or Special Immigrant\** to the United States Citizenship and Immigration Services (USCIS). The referral packet should include the following (in the English language):
  - a. Cover letter indicating why the child qualifies as a special immigrant juvenile (SIJ), including a short history of how the child came to be eligible for SIJ status;
  - b. Certified copy of the court order(s) that demonstrate the Juvenile Court's jurisdiction and contain the findings required for eligibility for SIJ status.
  - c. Copy of the child's birth certificate, or two affidavits affirming the child's age, date and place of birth, or other evidence of the child's age;
  - d. Two identical color photographs of the child taken within 30 days of the filing of the petition. See Photographs in Practice Guidance for specifications.
  - e. Any additional supporting documentation (e.g. letters from doctors or therapists)
  - f. Filing Fee: The filing fee is waived when filing as a Special Immigrant Juvenile.
4. Complete and sign, on behalf of a child under 14 years of age, *Form I-485 Application to Register Permanent Residence or Adjust Status\**. The application must be filed with the following supporting documents:

**NOTE:** It may be necessary to seek the assistance of a community based legal services to assist with the SIJ status application and interview process.

- a. Criminal History, if applicable
- b. Birth certificate
- c. Two identical color photographs of the child taken within 30 days of the filing of the application. See Photographs in Practice Guidance for specifications.
- d. Biometric Services
  - i. If between the ages of 14 and 79, applicants must be fingerprinted as part of the USCIS biometrics services requirement.
  - ii. After the application is filed, USCIS will notify the applicant in writing of the time and location where the fingerprinting is to take place.
  - iii. Failure to appear to be fingerprinted or for any other biometric service appointments may result in a denial of the application.

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- e. Medical Examination:
  - i. Submit a medical examination report on *Form I-693 Report of Medical Examination and Vaccination Record\**.
  - ii. The medical examination must be completed within 12 months of the date of the medical examination report.
- f. Form G-325 A Biographic Information Sheet\*
- g. Evidence of eligibility: Submit a completed SIJ petition (Form I-360)\* that if approved will make a visa number immediately available to the youth.
- h. Filing Fee
  - i. The filing fee for Form I-485\* is **\$985** (since fees change periodically, visit [www.uscis.gov](http://www.uscis.gov), select "Forms Filing Fees", and verify the current fee)
  - ii. An additional biometrics fee of **\$85** is required for applicants between 14 and 78 years of age.
  - iii. Make a check or money order payable to "**U.S. Department of Homeland Security**" (Do not use initials USDHS or DHS)
  - iv. The check or money order must be drawn on a bank or other financial institution in the United States and must be payable in U.S. currency.
  - v. A fee waiver may be requested using *Form 912 Request for Fee Waiver\**
- 5. Submit the *Form I-360 Petition for Amerasian, Widow(er), or Special Immigrant\** and the *Form I-485 Application to Register Permanent Residence or Adjust Status\** together. If the *Form I-360\** is approved (granting SIJ status), the child is allowed to immediately apply for Lawful Permanent Resident (LPR) with the Form I-485\* that was concurrently submitted. If the *Form I-485\** is filed separately, at a different time than the Form I-360, the SSCM must include a copy of *Form I-797C Notice of Action\** confirming that the *Form I-360\** was accepted by USCIS.
- 6. Refer to the USCIS National Customer Service Center at 1-800-375-5283 for the most updated information on where to file for the SIJ status application. Also refer to the following websites for additional information regarding filing:
  - <http://www.uscis.gov/i-360-addresses>.
  - <http://www.uscis.gov/forms-filing-tips>,
  - <http://www.uscis.gov/sites/default/files/files/form/i-360instr.pdf>.
 (See Legal Services in Practice Guidance regarding use of community based legal services to assist with the application and interview process.)
- 7. Ensure the child attends all USCIS appointments
  - a. Biometric services appointments (i.e. fingerprinting and photographs) for children 14 years of age and older; USCIS will mail the applicant an appointment notice for fingerprinting.
  - b. Interview(s) with the USCIS officer. It may be helpful for the child to prepare for the interview in advance with an immigration attorney.
- 8. Provide any additional information or documentation requested by the USCIS.
- 9. If SIJ status is granted, ensure the following:
  - a. The Medicaid and IV-E application is submitted to Rev Max with a copy of the USCIS approval letter indicating the adjusted status type and effective date.
  - b. The immigration status adjustment is documented on the applicable detail page Georgia SHINES, the Statewide Automated Child Welfare Information System.

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**When an immigrant child in foster care approaches 18 years of age, the SSCM will:**

1. Schedule a transition planning meeting within six months of an immigrant child's 18<sup>th</sup> birthday. At a minimum, the child, the Independent Living Specialist (ILS), the child's placement provider, and the child's Consular official will be invited to participate.
2. Develop a transition plan that includes goals to support the child's self-sufficiency upon exiting foster care at 18 years of age.

**NOTE:** In accordance with the Georgia Immigration and Security Act, no state or local government funding is available for undocumented immigrant children once they reach 18 years of age unless/until they obtain a legal immigration status.

**PRACTICE GUIDANCE**

**Vienna Convention on Consular Relations (VCCR)**

The VCCR establishes the provisions for obligations between the United States and other countries with respect to the treatment of foreign national minors and the performance of consular functions. Accordingly, the VCCR addresses notification to a consular officer when a minor is from a foreign nation. For the purposes of consular notification, a "foreign national" is defined as any child who is not a U.S. citizen. If DFCS obtains legal custody of a child who is a foreign national, federal obligations require that the foreign consulate be given notice.

The VCCR requirements are mutual obligations with foreign countries. In general, you should treat a foreign national parent and/or child as you would like for an American citizen to be treated in a similar situation in a foreign country. The VCCR requirements apply to all foreign national citizens. Therefore, all foreign national citizens are entitled to consular notification and access, regardless of their visa, refugee, or immigration status in the United States. Some foreign nationals are afraid of their government. Consequently, DFCS must operate with extreme sensitivity to avoid putting any foreign national or members of their family in danger.

**Immigration and Nationality Act**

Establishes procedures for the admission of lawful immigrants into the United States and provides registration protocols for undocumented immigrants present in the United States.

**United States Citizenship and Immigration Services (USCIS)**

On March 01, 2003, USCIS officially assumed responsibility for the immigration service functions of the federal government. The Homeland Security Act of 2002 dismantled the former Immigration and Naturalization Service (INS) and separated the former agency into three components within the Department of Homeland Security: 1) USCIS; 2) Immigrations and Customs Enforcement (ICE); and 3) Customs and Border Protection (CPB). USCIS was formed to enhance the security and improve the efficiency of national immigration services by exclusively focusing on the administration of benefit applications. ICE and CBP handle immigration enforcement and border security functions. Visit the USCIS website at [www.uscis.gov](http://www.uscis.gov) to obtain the latest USCIS forms and immigration-related information.

USCIS determines eligibility for SIJ status after processing the *Form I-360 Petition for Amerasian, Widow(er), or Special Immigrant\** which includes a review of supporting documentation and the Juvenile Court order. USCIS also determines a Special Immigrant Juvenile's eligibility for permanent resident status after processing *the Form I-485 Application*

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to Register Permanent Residence of Adjust Status\*.

### **Special Immigrant Juvenile (SIJ) Status and Lawful Permanent Resident (LPR) Status**

Some children present in the United States without legal immigration status may be in need of social services after becoming victims of abuse or neglect. Special Immigrant Juvenile (SIJ) status is an immigration classification that can be utilized as a step toward becoming a lawful resident of the United States. If sought, SIJ status needs to be obtained while the child is still under the jurisdiction of the Juvenile Court. In some cases, children may need to obtain SIJ status prior to turning 18 years of age to access certain benefits (e.g. federally funded foster care). To be eligible for SIJ status:

1. The child must be under 21 years of age on the filing date of the *Form I-360 Petition for Amerasian, Widow(er), or Special Immigrant\**.
2. The child must be unmarried.
3. A qualifying Juvenile court order must be in effect on the filing date of the *Form I-360\** and when the USCIS makes a decision on the application, unless the child “aged out” of the court’s jurisdiction due to no fault of his/her own.
  - a. The court order must be detailed and include the factual basis for the findings on parental reunification, dependency or custody, and best interests. It must be clear the court order was sought primarily for the purpose of child protection rather than primarily to obtain an immigration benefit.
  - b. Alternatively, a child may submit separate findings of fact, records from the judicial proceedings, or affidavits summarizing the evidence presented to the court.
4. The child must be inside the United States at the time of filing the *Form I-360\**.

One applies for SIJ classification by filing the *Form I-360 Petition for Amerasian, Widow(er), or Special Immigrant\** and supporting documents with the USCIS. Approval of the *Form I-360\** by the USCIS confers SIJ status, but does not confer permanent residency. In fact, a child with SIJ status must take additional steps in order to obtain lawful permanent resident (LPR) status with its associated Permanent Resident Card (aka “Green Card”) and other benefits. However, once a child is granted SIJ status, he/she is eligible to immediately apply for LPR status and work authorization. One can also apply for the LPR status at the same time as with the application for SIJ status. One applies for LPR status by *filing Form I-485 Application to Register Permanent Residence or Adjust Status\** and supporting documents. If possible, Form I-485 should be filed at the same time as *Form I-360\**. *Form I-485\** must be filed and approved in order to obtain a Permanent Resident Card, which is a key step towards U.S. Citizenship. Without a Permanent Resident Card, undocumented immigrant children may not be eligible to work legally, attend college, or qualify for most state and federal benefits. The parent(s) of a Special Immigrant Juvenile may not receive any immigration benefit based on the relationship to the juvenile.

### **United States Citizenship and Immigration Services Forms and Filing Fees**

Forms and filing fees change periodically. To ensure you are using the latest version of a form or have the current filing fee for a particular form, visit the USCIS Web site at [www.uscis.gov/forms-information](http://www.uscis.gov/forms-information). For more information regarding the latest filing fees view *Form G-1055 Fee Schedule\** at [www.uscis.gov/fees](http://www.uscis.gov/fees). USCIS is funded largely by application, petition, and biometrics services fees. However, recognizing that some may not be able to pay the fees, requests for fee waivers are considered on a case by case basis. When requesting a

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fee waiver, you must clearly demonstrate an inability to pay the fee. To have USCIS consider a fee waiver, you must complete and submit identifying all fees the child is unable to pay. Explain why the child has no income (e.g. child is in the legal custody of someone other than one of his/her parents). For further guidance on fee waiver requests, visit the USCIS website at [www.uscis.gov/feewaiver](http://www.uscis.gov/feewaiver).

### Photographs

Photographs submitted to the USCIS with petitions and applications must meet certain specifications:

1. You must submit two identical color photographs of the child taken within 30 days of the filing of the application.
2. The photos must have a white to off-white background, be printed on thin paper with a glossy finish, and be uncounted and un-retouched.
3. Passport-style photos must be:
  - a. 2"x2" in size;
  - b. Color photos with full face, frontal view on a white to off-white background;
  - c. Head height should measure 1" to 1-3/8" from bottom of photo;
  - d. Head must be uncovered unless the child is wearing a head covering as required by a religious order of which the child is a member.
4. Using pencil or felt pen, lightly print the child's name and Alien Registration Number (A-Number) on the back of each photo. The Alien Registration Number is a number assigned by the Department of Homeland Security to any person who is not a citizen or national of the United States. It begins with the letter A followed by eight or nine numbers (e.g. A12 345 678).

### Legal Services

The Special Assistant Attorney General (SAAG) in your area and the DFCS Legal Services office are available for consultation regarding cases that involve undocumented immigrant children, **but they are not authorized to represent the child in any manner in this process.** Due to the intricate nature of the U.S. immigration system, it may be necessary to consult an outside attorney who specializes in immigration law. **However, no government funds may be used to pay for the services of an immigration attorney.** The United States Department of Justice has made a list of qualified organizations and attorneys who provide free legal services available at <http://www.justice.gov/eoir/probono/states.htm>. The list is maintained by the Office of the Chief Immigration Judge (OCIJ). Please be advised that the Executive Office for Immigration Review (EOIR) does not endorse any of the organizations or attorneys on the list. In addition, the EOIR does not participate in, nor is it responsible for, the representation decisions or performance of the organizations or attorneys on the list. In addition, other community based organizations may have free and/or reduced legal services to assist with immigration needs.

## FORMS AND TOOLS

Consular Notification Form Letter

Foreign Consular Offices in the United States

Free Legal Services Provider List

United States Citizenship and Immigration Services - Resources

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United States Citizenship and Immigration Services - Forms Information  
United States Citizenship and Immigration Services - Fee Information

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